

BOSTON
BRUSSELS
CHICAGO
FRANKFURT
HAMBURG
HONG KONG
LONDON
LOS ANGELES
MILAN
MOSCOW
NEW JERSEY

Latham & Watkins

ATTORNEYS AT LAW
WWW.LW.COM

NEW YORK
NORTHERN VIRGINIA
ORANGE COUNTY
PARIS
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
SINGAPORE
TOKYO
WASHINGTON, D.C.

December 30, 2002

BY ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition by the Colorado Public Utilities Commission, Pursuant to 47 C.F.R.
§ 54.207(c), for Commission Agreement in Redefining the Service Area
of CenturyTel of Eagle, Inc., a Rural Telephone Company --
Notice of *Ex Parte* Communication in CC Docket 96-45

Dear Ms. Dortch:

On Monday, December 23, Tonya Rutherford of this office and I met with William Maher, Chief of the Wireline Competition Bureau, Jessica Rosenworcel, Legal Assistant to the Chief of the Wireline Competition Bureau, and Anita Cheng, Acting Deputy Chief of the Telecommunications Access Policy Division, Wireline Competition Bureau. We discussed the application for review or, in the alternative, petition for reconsideration filed December 17, 2002 in the above-captioned proceeding by CenturyTel of Eagle, Inc. ("CenturyTel"). On behalf of CenturyTel we urged that the Commission grant CenturyTel's application for review of, or reconsider on its own motion and suspend, the Bureau's decision not to initiate a proceeding to carefully consider the above-captioned matter.

CenturyTel is seeking review of the Commission's inaction on the above-captioned petition by the Colorado PUC to redefine the rural service area of CenturyTel so that competitive eligible telecommunications carriers ("CETCs") may enter the market at the wire center level, rather than serving an area coextensive with CenturyTel's study area. Under the Commission's rules, if the Commission does not "initiate a proceeding" on such a petition within 90 days of the date it is placed on Public Notice, the state petition is deemed granted and the new service area definition deemed approved by the FCC. The Commission delegated authority over such matters to the Chief of the Wireline Competition Bureau.

CenturyTel noted in its application for review that the Colorado PUC's petition was opposed by several commenters, who raised significant policy issues, and pointed out that the statute requires the Commission to consider the recommendations of the Joint Board before establishing a new service area in a proceeding such as this. Without any written order from the Bureau Chief, it is impossible to know whether the Commission, acting through the Bureau, satisfied the mandate of Section 214(e)(5) of the Communications Act and considered the Joint Board's prior recommendations concerning rural service areas. Further, the Commission very recently referred

Marlene H. Dortch, Secretary
December 30, 2002
Page 2

issues directly raised by the Colorado PUC petition to the federal-state Joint Board on universal service, making it even more surprising that the Bureau allowed the Colorado petition to take effect without initiating a proceeding or issuing an Order.

We raised these points in the meeting on December 23rd and urged that a proceeding be initiated that would have the effect of suspending the redefinition of CenturyTel's Colorado service area until the Commission can properly consider the recommendations of the Joint Board. Such an action will not prevent CETCs from serving the Colorado market pending such resolution of the substantive issues raised by CenturyTel and the other commenters. If the CETCs do not have signal coverage over all of CenturyTel's study area, they may serve it through a combination of resale and their own facilities, and thus could qualify for federal support (a fact the state commission does not appear to have considered). In the meanwhile, however, the FCC should not merely assume that the states have thoroughly examined whether a blanket redefinition of CenturyTel's rural service area for purposes of CETC support would serve the public interest goals of Sections 214(e) and 254 of the Communications Act.

We also noted that a similar petition by the Colorado PUC involving the redefinition of the service area of Delta County Tele-Comm, Inc., another rural LEC, was pending before the Commission, and also was opposed. The Bureau has since initiated a proceeding to more carefully examine the issues raised in that petition. *Wireline Competition Bureau Initiates Proceeding to Consider the Colorado Public Utilities Commission Petition to Redefine the Service Area of Delta County Tele-Comm, Inc. in the State of Colorado*, Public Notice, CC Docket 96-45, DA 02-3588 (Wireline Comp. Bur. rel. Dec. 24, 2002). CenturyTel urges the Commission to review the CenturyTel petition and suspend the decision of the Bureau to allow the Colorado petition affecting CenturyTel's service area to take effect without FCC action.

Mr. Maher inquired in the December 23rd meeting whether any similar petitions have been granted by the Commission in the past. Ms. Cheng noted that the Commission previously granted the petition by the Washington Utilities and Transportation ("WUTC") to designate the individual exchanges of several rural local exchange carriers ("LECs") to be their service areas for purpose of Section 214(e)(5). However, that petition was jointly filed by the WUTC and the rural incumbent LECs. The purpose of the petition was to facilitate the disaggregation of federal universal service support which at that time was still allocated at the study area level. The petition was joined by the rural LECs because they sought to establish different cost zones for high-cost support purposes within each exchange. The Commission agreed, and explained its reasons in a Memorandum Opinion and Order; the Commission later referred the question of disaggregation of high-cost support for rural carriers to the federal-state Joint Board, and after considering its recommendations eventually approved disaggregation of federal high-cost support for all incumbent LECs.

We also noted that at least two states, South Dakota and Utah, have considered petitions by wireless carriers to serve rural parts of those states on a competitive basis, and denied them on the grounds that they would not benefit the public or advance universal service. We have provided Ms. Cheng copies of the relevant decisions in those states, which are publicly available.

Marlene H. Dortch, Secretary
December 30, 2002
Page 3

In sum, CenturyTel asks that the Commission consider the effect that its inaction may have on CenturyTel's ability to continue providing high-quality service in its high-cost, rural service area in Colorado, and suspend operation of the redefinition of CenturyTel's service area until it has considered the policy issues raised by the commenters and the recommendations of the federal-state Joint Board on universal service.

Please direct any questions concerning this matter to me.

Very truly yours,

A handwritten signature in black ink, appearing to be 'KB', followed by a horizontal line extending to the right.

Karen Brinkmann

cc: William Maher, Chief, Wireline Competition Bureau
Jessica Rosenworcel, Legal Counsel to the Chief, Wireline Competition Bureau
Anita Cheng, Acting Deputy Chief, Telecommunications Access Policy Division, WCB